

MTC Uniformity Committee Comments

Wayfair Implementation and Marketplace Facilitator Work Group

Referrer Provisions:

The “referrer” provisions are unnecessary at this point in light of the *Wayfair* decision because marketplace facilitators or sellers will be required to collect and remit. Furthermore, a company whose role does not involve handling the money/wallet should not have tax collecting and/or reporting obligations. Therefore, the referrer provisions should be excluded entirely from state legislation or regulations implementing *Wayfair*. If “referrer” provisions are included, there should be an explicit exemption for providers of internet advertisers, without any conditions (*i.e.*, no requirement that the referrer not display the seller’s shipping terms or advertise whether the seller charges sales tax to be entitled to the exemption).

Interest & Penalties:

A vendor, seller, marketplace facilitator, and referrer should be entitled to a waiver of interest and penalties if a good-faith effort is made to implement systems and make process changes in order to comply with the new sales tax collection, remittance, and reporting responsibilities.

Economic Nexus Threshold:

A single threshold based on annual sales is preferred. In the case where the marketplace facilitator is the party responsible for collecting and remitting the tax, then the threshold(s) should apply to the marketplace facilitator only and not to each marketplace seller.

- It is not possible for the marketplace facilitator to know the level of total sales by 3rd-party marketplace sellers if the sellers are also using sales channels outside of their marketplace.
- It should also not every be incumbent upon the marketplace facilitator to notify sellers when they pass established thresholds.
- It would be extremely costly and inefficient for a marketplace facilitator to configure a tax calculation environment for each seller of record.
 - For example, the provision in the proposed New Jersey legislation that a marketplace facilitator shall not be required to collect and remit tax if the marketplace seller holds a certificate of registration and provides a copy to the marketplace facilitator prior to the retail sale should be avoided as it creates confusion and/or an unneeded administrative burden to the marketplace facilitator. It would be preferable if the marketplace facilitator is always required to collect on all third-party sales as the default, regardless of whether the seller is registered. If the marketplace seller is permitted to collect in certain instances (such as when a certificate of registration is provided to the marketplace facilitator), it should be subject to the terms of the agreement between the marketplace facilitator and marketplace seller or at the election of

the marketplace facilitator (but never an affirmative requirement that the marketplace facilitator not collect on a seller-by-seller basis).

Limited Liability – Incorrect Information from Marketplace Seller:

A marketplace facilitator should be relieved of any liability for failure to collect and remit the correct amount of the tax to the extent that the marketplace facilitator can demonstrate that the error was due to incorrect information given to the marketplace facilitator by a marketplace seller. This should include (but not be limited to) incorrect coding or product characterization by the marketplace sellers on the marketplace platform. There should be no limit on the amount of liability, interest, and penalty relief to the marketplace facilitator since the error is attributable to the marketplace seller. There should also be no sunset on this provision.

Exemption Certificates:

A marketplace facilitator should be able to accept tax exemption certificates in the name of either the marketplace facilitator or the marketplace seller.

Respecting the Terms of the Marketplace Facilitator-Seller Agreement:

The taxing jurisdiction should be required to respect the terms of the agreement between the marketplace facilitator and marketplace seller regarding tax nexus footprint, tax collection/remittance responsibility, and tax audit responsibilities.

- *Nexus Footprint* - As an example, the contract might stipulate whether tax is calculated based on the marketplace facilitator's nexus foot print or that of the seller.
- *Tax Collection & Remittance Responsibility* - As an example, the contract might identify whether the marketplace facilitator or marketplace seller has collection and remittance responsibility.
- *Tax Audit Responsibilities* - As an example, the contract might identify whether the marketplace facilitator or the marketplace seller will be primarily responsible for managing audits by taxing jurisdictions. Whomever collects and remits the tax should be the primarily responsible for responding to audit inquiries by the taxing jurisdiction.

No Separate Tax Returns Required for Marketplace Seller Transactions:

A marketplace facilitator should be allowed to combine first-party sales and related tax with the third-party sales and related tax on one tax return filed by the marketplace facilitator. However, upon audit, the marketplace facilitator may be required to separate the first-party sales from the third-party sales for tax auditors.